

**EVALUATION STUDY  
OF  
SPECIAL EDUCATION  
DISPUTE RESOLUTION ISSUES  
IN CALIFORNIA**

**EXECUTIVE SUMMARY**

**FINAL REPORT**

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# **CALIFORNIA'S HEARING AND MEDIATION SYSTEMS EXECUTIVE SUMMARY**

## **TABLE OF CONTENTS**

<b>PART ONE - PREAMBLE</b>	<b>3</b>
<b>PART TWO - SYSTEMIC CHANGE OUTSIDE THE HEARING AND MEDIATION SYSTEMS</b>	<b>4</b>
A. CHANGE THE PARADIGM	4
B. TRAINING IN SPECIAL EDUCATION LAW	5
C. THE HEARING AND MEDIATION SYSTEMS: Access to Information	6
D. COMPLAINT SYSTEM	6
E. MODELS OF LOCAL INTERVENTION	8
<b>PART THREE - THE HEARING AND MEDIATION SYSTEMS</b>	<b>8</b>
A. HEARING OFFICERS AND MEDIATORS	8
QUALIFICATIONS AND COMPENSATION	8
B. SUPERVISION AND EVALUATION OF HEARING OFFICERS AND MEDIATION	11
C. TRAINING OF HEARING OFFICERS AND MEDIATORS	12
D. FUNDAMENTAL FAIRNESS AND PERCEPTION OF FAIRNESS	13
E. THE ONE-TIER HEARING SYSTEM	13
F. TIMELINESS OF THE HEARING AND MEDIATION SYSTEMS	13
G. EFFICIENCY AND EFFECTIVENESS OF THE MEDIATION SYSTEM	14
H. EFFECTIVENESS AND EFFICIENCY OF THE HEARING SYSTEM	15
1. PRE-HEARING PROCESS	15
2. DISCLOSURE - Avoid Surprise	17
3. CLOSING ARGUMENTS AND BRIEFS	18
4. DECISIONS	18
I. ORDERLY AND RESPECTFUL CONDUCT OF THE PROCESS	19
G. EXPEDITED HEARINGS	19
H. PROTOCOLS AND MANUALS	20
I. EQUAL ACCESS	20
J. SINGLE ENTITY	21
K. CDE AND THE HEARING AND MEDIATION SYSTEMS	22
L. SUSTAINABLE EFFORT	23
M. STABILITY IN FUNDING	23
N. RELATED STATUTORY REVISIONS	24

# CALIFORNIA'S HEARING AND MEDIATION SYSTEMS

## EXECUTIVE SUMMARY

### PART ONE - PREAMBLE

California has a hearing system with a success rate on cases appealed to Federal and State court that is enviable for any administrative hearing system. To date, of the forty Hearing Decisions or Orders appealed to court, only two have not been generally affirmed. The Federal Ninth Circuit Court of Appeals has affirmed all twelve cases appealed to that level, and has accorded California's Hearing Officers' determinations substantial deference in the past because the decisions "evinces his careful, impartial consideration of the evidence and demonstrates his sensitivity to the complexity of the issues presented" and were "intensive" and "comprehensive". (Ojai, Supra; County of San Diego v. California Special Education Hearing Office, 93 F.3d 1458; 24 IDELR 756 (9th Cir. 1996); Capistrano Unified School District v. Wartenberg, 59 F.3d 884; 22 IDELR 804 (Cir. 1995); Union School Dist. v. Smith, 15 F.3rd 1519; 20 IDELR 987 (9th Cir. 1994), cert. denied)

"Hearing decisions that are not soundly decided will lead to further litigation, be more likely to be reversed and create higher costs." California's appeal record strongly supports the integrity of the current hearing decisions.

Upon filing a due process hearing request, Local Educational Agencies (LEAs) and parents access mediation 97 percent of the time. Throughout the study, parties expressed support for the mediation system. Over the past five years, an average of only 4 percent of the hearing requests filed, result in a decision. The promise of mediation, and the parties' commitment to resolution through mediation is high.

This is not, as some individuals have characterized it, a system that is "broken". It is, however, a system in need of some improvement. Some of the recommended changes contained in this Report can be effected within the existing system and resources. But, it would be irresponsible to neglect to acknowledge at the outset of the Report, the recommendations that would effect fundamental and meaningful changes in the system will require additional fiscal support to avoid impasse and for the mediation and hearing systems themselves.

### Stakeholder Agreement<sup>1</sup>

The Stakeholders agree that the hearing and mediation systems have been, and are currently, under funded. In order to effect fundamental change in the systems, the State of California will need to provide adequate support.

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<sup>1</sup> The Stakeholders represent diverse perspectives as a party or other participant in the mediation and/or hearing systems. **All areas of Stakeholder agreement to the recommendations in this Report are noted as such. No presumption of Stakeholder agreement should be inferred to any aspect of this Report that is not identified by the notation "Stakeholder Agreement".**

## **PART TWO – SYSTEMIC CHANGE OUTSIDE THE HEARING AND MEDIATION SYSTEMS**

### **A. CHANGE THE PARADIGM**

**It is about relationships.**

## **RECOMMENDATIONS**

### **Stakeholder Agreement**

- ❑ Statewide training and training materials should be available to all parents of students with disabilities and school personnel and to representatives of LEAs and parents of students with disabilities in the following areas:
  - The psychology of disputes;
  - Barriers to communication;
  - Collaborative decision-making and problem solving;
  - The parent and school partnership in the development of Individualized Education Programs (IEPs);
  - How to avoid impasse; and
  - How to resolve an impasse, if reached, including information on the availability of, and participation, in mediation.

### **Stakeholder Agreement**

- ❑ This training should be designed to help parents and schools avoid impasse and, if there is an impasse, to foster skills essential to successful mediation and to enhance the prospect of restoring the parent and school partnership after the hearing process. It is important that there be a consistency of philosophy and information in these trainings. Therefore, in consultation with parents, school personnel, school and parent representatives, and the Master Contractor for the hearing and mediation systems, the California Department of Education (CDE) should be mandated to develop the core materials and the method to implement and evaluate this statewide training. Statewide consistency on the fundamental philosophy and information should be facilitated through methods such as training individuals to be available for assisting in local trainings. The training materials should be available on a widespread basis to allow parents and school personnel who are unable to attend the trainings to access the information.

### **Stakeholder Agreement**

- ❑ This training should not be mandated at the local level; however, the goal is that this training be universally provided at the local level. Each community of school personnel and parents has different personalities, cultures, and needs; therefore, each LEA, in consultation with school personnel and parents, should design the local trainings. The training should be a joint training by local parents and local school personnel and the information and approach should be focused on contemporary realistic issues that result in impasse.

### **Stakeholder Agreement**

- ❑ This training should be available at least annually because of the high turnover in special education personnel and the new parents of students with disabilities entering the system. The CDE should evaluate the training and its impact on an ongoing basis.

### **Stakeholder Agreement**

- ❑ The CDE must be provided adequate fiscal support to implement this recommendation. It is also recommended that sufficient funds be allocated to provide a grant to LEAs to support this training endeavor at the local level. The amount of funding dedicated to the local training grants must include consideration of the geographic and demographic challenges in California.

## **B. TRAINING IN SPECIAL EDUCATION LAW**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement :**

- ❑ Statewide training in special education law, at no cost to the participants, should be available to parents of students with disabilities, school personnel, and parent and school representatives.

#### **Stakeholder Agreement**

- ❑ The training materials should be developed in consultation with parents, school personnel, school and parent representatives, and the Master Contractor for the hearing and mediation systems. The training should be a joint training by parent and school representatives to establish a necessary level of credibility and openness in the training.

### **Stakeholder Agreement**

- ❑ The CDE must be provided adequate fiscal support to implement this recommendation. The amount of funding dedicated to conduct this training must include consideration of the geographic and demographic challenges in California.

## **C. THE HEARING AND MEDIATION SYSTEMS: Access to Information**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ The Master Contractor for the hearing and mediation systems should provide statewide training in the hearing process, including effective advocacy. The training materials should be developed in consultation with the CDE, and school and parent representatives with extensive experience in the hearing system. Consideration should be given to the development of videos to provide information on how to access the hearing and mediation systems and what to expect as a party or participant.

#### **Stakeholder Agreement**

- ❑ This training should be available to parents of students with disabilities, school personnel, and school and parent representatives at no cost to the participants. The training materials should be available on a widespread basis to allow parents and school personnel who are unable to attend the trainings to access the information.

#### **Stakeholder Agreement**

- ❑ The budget for the contract for the hearing and mediation systems must provide adequate fiscal support to implement this recommendation.

## **D. THE COMPLAINT SYSTEM**

#### **Stakeholder Agreement**

- ❑ Due to the lack of public confidence in the integrity of California's complaint system, some cases that could have been resolved through the complaint process are diverted to the hearing and mediation systems. There is a need for a complete overhaul of the complaint system, including clear and timely procedures for the

reconsideration process pursuant to Title 5, California Administrative Code, Section 4665, and clear and unequivocal enforcement for noncompliance.

## **RECOMMENDATIONS**

### **Stakeholder Agreement**

- ❑ The CDE must establish written protocols with consistent standards for the complaint system. Where necessary, standards or requirements that may constitute “underground regulations” must be proposed as revisions to the Education Code or Title 5, California Administrative Code.
- ❑ The CDE must notify the special education community as soon as possible of:
  - The availability of various remedies through the complaint system for substantiated LEA noncompliance, including compensatory reimbursement and compensatory education, where appropriate;
  - Clear timelines for the investigation and issuance of the decision and the reconsideration process; and
  - Most importantly, the CDE’s clear and unequivocal authority and commitment to take meaningful enforcement action when compliance is not achieved within a fixed and reasonable period.

### **Stakeholder Agreement**

- ❑ The CDE must establish and communicate its clear and unequivocal authority and commitment to take meaningful enforcement action in an expedited process for failure to provide a service in a mediated agreement, or otherwise fail to implement a mediation agreement or an order in a hearing decision. Written consensual settlements between parties reached as a result of procedures initiated pursuant to Education Code Sections 56500.3 or 56501 that do not conflict with State or federal law should also be enforceable through the complaint process.

### **Stakeholder Agreement**

- ❑ For procedures initiated pursuant to Education Code Sections 56500.3 or 56501, the CDE should consider the revision of Title 5, California Administrative Code, Section 4670 or State law to authorize sanctions for the violation of a mediation or settlement agreement, that does not conflict with State or federal law, or an order in a hearing decision.

### **Stakeholder Agreement**

- ❑ If necessary, additional fiscal support must be provided to the complaint system to fortify the follow-up and enforcement process and increase the minimum qualifications of complaint investigators.

## **E. MODELS OF LOCAL INTERVENTION**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ There are a variety of formal and informal models of local intervention to resolve disagreements post-IEP, including the personal intervention of Special Education Local Plan Area (SELPA) Directors.

The following are recommended:

- The CDE conduct a formal state evaluation of the efficacy of the various local intervention models and determine the consistent elements in successful models;
- Subsequent to the evaluation of the models, the CDE develop some guidelines for effective local interventions to ensure a degree of standardization, including ensuring such interventions are time-limited and do not deny or delay the right of the parties; and
- Any local interventions need to be clearly articulated as separate from the hearing and mediation systems, including State mediation available prior to filing a request for a hearing, and must not obstruct access to or minimize the efficacy of State mediation or hearing.

## **PART THREE - THE HEARING AND MEDIATION SYSTEMS**

### **A. QUALIFICATIONS AND COMPENSATION**

#### **Stakeholder Agreement**

In order to attract and retain qualified Hearing Officers and Mediators, the minimum level of compensation and qualifications must be raised.

### **HEARING OFFICERS**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ Increase the minimum qualifications for Hearing Officers. There is agreement among the Stakeholders to the construct that the higher the required level of



qualifications and experience for Hearing Officers, the more improved the system will be.

- There is also agreement among the Stakeholders that the minimum qualifications for Hearing Officers should include:
  - Demonstrable judicial temperament, including the ability to treat all parties fairly, to take charge, to maintain order and decorum in the hearing proceedings, to disregard all prejudicial influence, to assess and evaluate the evidence presented and to apply the law; and
  - Demonstrable reasoning and writing skills.

Employment should be contingent on the successful conduct of a mock hearing.

There is a **split** among the Stakeholders on whether the Hearing Officer should be an attorney. Ten of the eighteen Stakeholders think comparable experience should be acceptable in lieu of being an attorney with at least two years of experience. To demonstrate the degree of controversy, it is worthy to note that the two representatives of the Master Contractor's administrative staff disagree on this matter.

Although there is not agreement among the Stakeholders that the Hearing Officer should be an attorney, this Contractor still recommends that:

- California maintains the current statute permitting non-attorneys to serve as Hearing Officers;
- To address the current needs of the system, require Hearing Officers to be attorneys, member of the bar in good standing with at least two years of experience, preferably more, in at least the next Request for Proposal cycle; and
- Educational experience and experience as an attorney before a trial court or quasi-judicial administrative body, be included as preferred qualifications.

It is the Contractor's judgment that elevating the qualifications and experience of the Hearing Officers is fundamental to an improved system. If the CDE does not accept the Contractor's recommendation that the Hearing Officers be experienced attorneys:

- The "comparable requirements" provision must be carefully considered to ensure the State benefits from the increased compensation and other budgetary recommendations integrally tied to the experience and skill of the Hearing Officer; and
- The quality of the pre-service training and mentoring becomes even more vital, and must be commensurate with the qualifications, knowledge, and experience of the candidate.

### **Stakeholder Agreement**

- ❑ Increase the compensation for Hearing Officers, and maintain cost of living adjustments and opportunities for advancement comparable to State administrative adjudicators.

### **Stakeholder Agreement**

- ❑ The number of Hearing Officers employed by the Master Contractor must consider working conditions conducive to retaining Hearing Officers, including number of hours worked and required travel, and an adequate number of Hearing Officers at an increased level of qualifications and experience to implement the recommendations in this Report.

### **Stakeholder Agreement**

- ❑ Hearing Officers are employees with an annual salary and benefits. Based on December 1999 reported compensation schedules from the State Personnel Board for Hearing Officers, at the date of this Report, it is recommended that the current annual range of salaries from \$41,000 to \$60,000 be increased to a range of \$63,000 to \$80,000 with benefits and annual cost of living adjustments consistent with State administrative adjudicators.

## **MEDIATORS**

### **RECOMMENDATIONS**

### **Stakeholder Agreement**

- ❑ Increase minimum qualifications for Mediators.

### **Stakeholder Agreement**

- ❑ The minimum qualifications for Mediators should include:
  - The aptitude for being a mediator, including the ability to work well with people in conflict;
  - Listening and communication skills;
  - Experience in facilitating dispute resolution and /or experience in regular or special education with some experience in dispute resolution;
  - The ability to assist in the clarification of issues of disagreement;
  - Organizational skills; and
  - Reasoning and writing skills.

Employment should be contingent on successfully conducting a mock mediation.

### **Stakeholder Agreement**

- ❑ Increase the contractual compensation for Mediators and maintain cost of living adjustments and opportunities for advancement.

### **Stakeholder Agreement**

- ❑ Mediators are independent contractors with no benefits. Mediators have been compensated at \$25.00 an hour for sixteen years. Based on the rate of inflation, this reflects over a 50 percent reduction in salary. At the date of this report, it is recommended that the compensation for the contractual Mediators be increased from the hourly rate of \$25.00 to an entry level of \$50.00 an hour with annual cost of living adjustments consistent with California State employees' rates. It is recommended that the hourly rate salary of \$50.00 should range up to \$75.00 an hour, based on experience and qualifications, with annual cost of living adjustments consistent with California State employees' rates.

### **Stakeholder Agreement**

- ❑ The budget for the contract for the hearing and mediation systems must provide adequate fiscal support to implement the recommended increases in compensation.

## **B. SUPERVISION AND EVALUATION OF HEARING OFFICERS AND MEDIATORS**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ The hearing and the mediation systems must provide for a sufficient allocation of time for senior personnel of the Master Contractor to provide initial and ongoing mentoring, coaching, technical assistance, supervision and evaluation of the Hearing Officers and Mediators. The oversight and evaluation should include mediums such as observation and the review of agreements, decisions, case management records, and verbatim records of the hearings. These individuals should be considered key personnel in the organization chart of a Master Contractor.

#### **Stakeholder Agreement**

- ❑ The budget for the contract for the hearing and mediation systems must provide adequate fiscal support to implement the supervision and evaluation recommendation.

## **C. TRAINING OF HEARING OFFICERS AND MEDIATORS PRE-SERVICE AND IN-SERVICE**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ The Hearing and Mediation systems must provide for pre-service and in-service training for Hearing Officers and Mediators in the areas of special education law, special education program, and skill development. The skill development for Mediators should include interest-based mediation.

#### **Stakeholder Agreement**

- ❑ Five days to ten days of in-service training must be provided annually to all Hearing Officers and Mediators.

#### **Stakeholder Agreement**

- ❑ The budget for the contract for the hearing and mediation systems must provide adequate fiscal support to implement the pre-service and in-service recommendations, and allow access to outside expertise and attendance at conferences.

#### **Stakeholder Agreement**

- ❑ Training in special education law, special education program, including school site visitations, and skill development should be provided prior to conducting the first hearing or facilitating the first mediation and must be ongoing, including advanced skill training. The mentoring aspect of the existing Hearing Officer and Mediator pre-service training should be maintained. Due to the anticipated varied background and experience of the Hearing Officer and Mediator candidates, the training must be designed to meet the needs of the candidates and must be provided regularly to stay abreast of the rapidly changing law and need for ongoing opportunities to enhance skills.
- ❑ The pre- and in-service training on special education program is the most problematic aspect of the pre- and in-service training because of the possibility of inculcating the Hearing Officers or Mediators with a real or perceived bias. School personnel, parents and disability organizations should be involved in the development of the training material to ensure the content is even-handed and above reproach. It is recommended that the pre-service training also include a panel comprised of a parent or parent representative and school personnel or school representative to ensure the Hearing Officers and Mediators understand the impact of the process itself on the parties.

## **D. FUNDAMENTAL FAIRNESS AND PERCEPTION OF FAIRNESS**

### **CONCLUSION**

California has sound hearing and mediation systems that accord the parties procedural justice. Improving the perception of the fairness of the hearing and mediation systems is not as simple as increasing the qualifications and training of the Mediators and Hearing Officers and improving the efficiency and effectiveness of the systems, but it will go a long way toward approaching that goal.

## **E. THE ONE-TIER HEARING SYSTEM**

### **CONCLUSION**

Achieving a balance between increasing efficiency and maintaining effectiveness is a challenge in a complex system like California's. Solutions to increase the efficiency and effectiveness of the hearing system abound. It is strongly recommended that the CDE consider the implementation of recommendations in this Report and continue to explore efficiencies within the existing system with the Master Contractor, parents, school personnel and their representatives before abandoning a largely effective system.

## **F. TIMELINESS OF THE HEARING AND MEDIATION SYSTEMS**

### **CONCLUSION**

There is no consistent protocol in the hearing and mediation systems for case management or a clear designation of anyone in the system who is responsible for ensuring there are no unnecessary delays in cases from the filing of a request for a hearing to the issuance of a decision. Consistent case management could assist in maintaining the momentum of mediation and hearing activity.

For those cases involved in mediation, it is the Mediator who can most ably manage cases up to the scheduled hearing date. For those cases involved in mediation and “off-calendar”, case management by the Mediator should be up to, at least, the referral to the hearing system for the scheduling of a hearing date, if mediation is unsuccessful.

For those cases where mediation is waived or is unsuccessful, the pre-hearing process, including the calendaring system, must include the clear designation of responsibility to ensure that there are no unnecessary delays in the conduct of the hearing and the issuance of the decision. It is the assigned Hearing Officer or a presiding Hearing Officer who can most ably manage cases at this point in the system.

A pre-hearing process that including ascertaining the parties' estimate of time necessary to hear a case and attempting to set dates to accommodate the calendars of the parties

and to calendar the hearing for consecutive business days until concluded, if possible, would go far in enhancing the timeliness of California's hearing and mediation systems. (Additional recommendations for case management during the hearing process are included in the Hearing section.)

## **RECOMMENDATIONS**

### **MEDIATION**

#### **Stakeholder Agreement**

- ❑ The mediation system must maintain a sufficient number of qualified Mediators to ensure mediation can be offered within two weeks of the filing of a request for a hearing. Mediators must be assigned to individual cases on that basis.

#### **Stakeholder Agreement**

- ❑ The mediation system must include protocols for case management that ensure assigned Mediators actively monitor and manage cases up to the date for the hearing. Regular reports must be submitted on the status of all assigned cases, and the last contact with the parties. Since case management will require additional time allocated for each case, the budget for the mediation system must include consideration of the cost of this requirement at the increased level of qualifications and experience.

#### **Stakeholder Agreement**

- ❑ The budget for the mediation system must include adequate fiscal support for the cost of these recommendations, including personnel time to facilitate the case management process, taking into consideration the potential for maximizing efficiencies.

## **G. EFFICENCY AND EFFECTIVENESS OF THE MEDIATION SYSTEM**

### **MEDIATION**

#### **RECOMENDATION**

#### **Stakeholder Agreement**

- ❑ All Mediators must have or acquire the skill to:
  - Select from a spectrum of strategies, techniques and styles applicable to the nature of the issues and the participants;

- Proactively manage the mediation process;
- Assess the prospect of mediation and the affect of delay;
- If parties are represented and willing, attempt to set available dates for the conduct of the hearing if the issue(s) is not resolved at mediation; and
- Assist in the identification of the issues of disagreement early in the mediation process.

## **PREHEARING MEDIATION**

### **RECOMMENDATION**

#### **Stakeholders Agreement**

- ❑ In addition to the statutory revisions recommended in Part Three, Section N of this Report on “stay-put” and the existing prohibition on the participation of attorneys and advocates, information on the existence of prehearing mediation should be widely disseminated to LEAs and parents of students with disabilities. The characterization of this mediation should not use the term of art in the statute, “prehearing” mediation, since there was input throughout the study process that evidenced confusion on the need to file for a hearing.

## **H. EFFICENCY AND EFFECTIVENESS OF THE HEARING SYSTEM**

### **1. PRE-HEARING PROCESS**

#### **RECOMMENDATIONS**

##### **Stakeholder Agreement**

- ❑ The hearing system must include a pre-hearing process, whereby the Hearing Officer, upon his or her own motion or upon the request of either party, can direct the parties to engage in a prehearing conference. This pre-hearing process would be initiated after mediation or upon the waiver of mediation.

##### **Stakeholder Agreement**

- ❑ The pre-hearing process, including the prehearing conference, must be equitable for unrepresented parties.

##### **Stakeholder Agreement**

- ❑ The pre-hearing process may include multiple conferences; however, it is preferable that the Hearing Officer who will preside at the hearing address matters relating to the conduct of the hearing in the prehearing conference.

## **Stakeholder Agreement**

- ❑ The budget for the hearing system must include adequate fiscal support for the cost of this recommendation, including personnel time to facilitate the pre-hearing process, taking into consideration the potential for maximizing efficiencies.

## **Stakeholder Agreement**

- ❑ The pre-hearing process must address the following, if appropriate, and any other matters to promote the orderly conduct of the hearing:
  - If either party is unrepresented, ascertain if the party will be represented at the hearing and obtain contact information. Inquire whether the parent has received a copy of his or her rights, including notice of any free, or low cost legal services that are available;
  - The identification of the precise issues that will be heard;
  - A determination whether it is an expedited hearing on discipline under the IDEA;
  - Ascertain the parties' estimate of the time necessary to hear the case;
  - Attempt to set dates to accommodate the calendars of the parties, and calendar the hearing for consecutive hearing days, if possible;
  - Consider the number of witnesses and the possible redundancy of testimony;
  - Resolve any witness scheduling problems that may be anticipated;
  - Discuss whether any continuances of the hearing timeline are anticipated, the procedures for requesting a continuance, and the standard for granting a continuance;
  - Ascertain if there are any pre-hearing disputes such as jurisdiction and stay-put, that might require pre-hearing briefing or evidence and set dates and procedures for submitting arguments and deciding such motions;
  - Inform the parties of how the hearing will be conducted, who will have the burden of going forward and who will have the burden of proof on each issue;
  - Determine whether there is a need for an interpreter or special accommodation at the hearing;
  - Determine whether the parent will open the hearing to the public;
  - Establish the rules for the submission of documentary evidence, and remind the parties that the witness list must include the general nature of the witnesses' testimony;
  - Particularly where the parties are represented by counsel, encourage the submission of joint exhibits, stipulations to admissibility and expertise of witnesses, and a list of agreed upon facts;
  - Inform the parties of the dates required to meet the five business day rules for the disclosure of documentary evidence, evaluations and witness lists, including general area of testimony, and of the requirement to submit the



evidence, evaluations and witness lists to the Hearing Officer pursuant to Education Code Section 56505.1(f); and

- Ascertain whether the parties are interested in attempting mediation, and encourage them to consider the option of mediation as an alternative to hearing. (Education Code Section 56505(d))

### **Stakeholder Agreement**

- ❑ The prehearing conference may be conducted by telephonic or other electronic means consistent with Title 5, California Administrative Code, Section 3082(g). After the prehearing conference, the Hearing Officer must issue a written prehearing order that incorporates the matters determined at the conference.

### **Stakeholder Agreement**

- ❑ The pre-service and in-service training for Hearing Officers must include skill development in the conduct of the pre-hearing processes and the hearing itself, including the extent and proper exercise of the authority of the Hearing Officer in determinations of relevancy and other evidentiary efficiencies.

**Eleven** of the eighteen Stakeholders advocate for the Hearing Officer's explicit or inferred authority to limit the number of days allowed to conduct the hearing on a case-by-case basis. This Contractor recommends that justice is better served by addressing inefficiencies in the current conduct of the hearing through an effective pre-hearing process and the proper exercise of the authority of the Hearing Officer to limit irrelevant, redundant or cumulative testimony and/or documentary evidence.

## **2. DISCLOSURE - Avoid Surprise**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ The pre-hearing process must include direction to the parties on the required level of specificity for meaningful disclosure of the witnesses that the parties intend to present at the hearing and their general area of testimony. (Education Code Sections 56505 (e)(7))

#### **Stakeholder Agreement**

- ❑ The pre-hearing process must include direction to the parties on the required notice to the other party of any requested subpoena or subpoena duces tecum and the procedures, including the timelines, to submit a motion to quash (suppress) any subpoena or subpoena duces tecum. (Title 5, California Administrative Code, Section 3082(c)(2))

### **Stakeholder Agreement**

- ❑ Hearing Officers must be trained in the judicious use of the authority to order an independent educational evaluation and call witnesses as independent medical specialists pursuant to Education Code Section 56505.1(e) and (g). The budget for the hearing system must include consideration of the cost of this recommendation

## **5. CLOSING ARGUMENTS AND BRIEFS**

### **RECOMMENDATION**

#### **Stakeholder Agreement**

- ❑ Hearing Officers must judiciously exercise their discretion on the determination of the desirability of the parties' submission of written closing arguments and briefs, and communicate this determination as early as possible in the conduct of the hearing. If the Hearing Officer determines written closing arguments and briefs are desirable, the Hearing Officer should provide guidance to the parties, including the date necessary to receive closing arguments and briefs for the timely issuance of the decision, the length of the briefs, and the desired areas of focus.

## **6. DECISIONS**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ The hearing system must provide for regular periods of consecutive writing time for Hearing Officers close in time to the conduct of the hearing and the close of the record. The budget for the hearing system must include consideration of the cost implications of this recommendation.

#### **Stakeholder Agreement**

- ❑ A topical and comprehensive index of the hearing decisions and orders should be publicly available. Although the hearing decisions are not precedent decisions, it would be helpful for the parties to be able to easily access the decisions rendered on various issues. The existence of such an index may actually avert filings and/or facilitate mediation. The budget for the hearing system must include consideration of the cost of this recommendation.

## **F. ORDERLY AND RESPECTFUL CONDUCT OF THE PROCESS**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ The Master Contractor, with the involvement of parent and school representatives, should develop recommendations to the CDE for sanctions for failure of a party representative to act in a professionally appropriate and constructive manner in special education mediations or hearings.
- ❑ The development of the recommendations should include consideration of:
  - A continuum of sanctions including suspending and/or barring a party representative from appearing in these proceedings for a period of time;
  - The efficacy of the process requiring CDE's prior approval (Title 5, California Administrative Code, Section 3088); and
  - The efficacy of the existing prohibition on a party's initiation of contempt sanctions. (Title 5, California Administrative Code, Section 3088)

## **G. EXPEDITED HEARINGS**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ The California Education Code should be revised to clearly provide for an expedited hearing if a parent of a student with disabilities requests a hearing on the LEA's determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under the discipline procedures consistent with the Individuals with Disabilities Education Act. (IDEA: 20 U.S.C. §1415(k); 34 C.F.R. §300.525)

#### **Stakeholder Agreement**

- ❑ The California Education Code should be revised to provide for authority consistent with the IDEA to allow a Hearing Officer, in an expedited hearing, to order a change in the placement of a student with disabilities to an appropriate interim alternative educational setting if maintaining the current placement of the student is substantially likely to result in injury to the student or others. (34 C.F.R. §300.521)

### **Stakeholder Agreement**

- ❑ The budget for the hearing system must include consideration of the cost of expedited hearings.

## **H. PROTOCOLS AND MANUALS**

### **RECOMMENDATIONS**

#### **Stakeholder Agreement**

- ❑ A hearing and mediation manual or common core of procedures should be developed for Hearing Officers and Mediators on the pre-hearing process, the conduct of a hearing and the conduct of mediation. Where necessary, standards such as what constitutes good cause for a continuance, the burden of proof and the burden of going forward, the standards for telephone testimony or other requirements relating to the body of procedural safeguards that may constitute “underground regulations” must be proposed as revisions to the Education Code or Title 5, California Administrative Code.

#### **Stakeholder Agreement**

- ❑ The Master Contractor must develop the manuals/protocols or regulatory or legislative proposals in consultation with parent and school representatives. The manuals/protocols must be made publicly available to parents, school personnel, and their representatives.

#### **Stakeholder Agreement**

- ❑ The budget for the hearing and mediation systems must include consideration of the cost of this requirement.

## **I. EQUAL ACCESS**

### **CONCLUSION**

#### **Stakeholder Agreement**

- Anecdotal information raises the likelihood that California's hearing and mediation systems are not accessible to families from culturally, economically and linguistically diverse backgrounds. (It should be noted that the current hearing and mediation systems do provide interpreters, where necessary.)

## **RECOMMENDATIONS**

### **Stakeholder Agreement**

- ❑ Information must be widely available to both parents and school personnel on the hearing and mediation systems.
- ❑ Additional data must be collected to determine if the anecdotal information on the absence of equal access is accurate. If there is not equal access to all families of students with disabilities to the hearing and mediation systems, resources, procedures and policies must be established that provide equal access and are responsive to a broad spectrum of cultural, linguistic and economic differences.

The Stakeholders are **not**, however, in agreement on how to afford all families of students with disabilities equal access to the hearing and mediation systems if unequal access is verified.

This Contractor recommends that the CDE request further study of this issue by the Legislative Analyst's Office or other appropriate body or individual. If unequal access is verified, this Contractor offers the following for consideration as a time-limited pilot program with evaluative components:

- A grant to a private, nonprofit agency or agencies and/or the establishment of a collaborative of attorneys with agreed upon fees for public representation who meet specific selection criteria; and/or
- A grant to a private, nonprofit agency or agencies to provide information and assistance to parents and school personnel in the framing of issues and preparing for mediation and hearing.

## **J. SINGLE ENTITY**

## **RECOMMENDATIONS**

### **Stakeholder Agreement**

- ❑ Even if State law is changed to authorize CDE to contract with more than one entity to administer the State mediation and hearing systems, it is recommended that the CDE first consider changes proposed in this Report within the existing contractual structure of a single entity. The administration of the mediation and hearing systems through a single entity avoids unnecessary fiscal expenditures and problematic concerns relating to general supervision, particularly with regard to consistent interpretations of the law.

## **Stakeholder Agreement**

- ❑ Even if State law is changed to authorize CDE to contract with more than one entity to administer the State mediation and/or hearing systems as regional systems, it is not recommended due to the serious implications administratively and legally.

## **Stakeholder Agreement**

- ❑ Even if the State law is revised to authorize the CDE to contract with multiple entities to administer the mediation system prior to filing for a hearing, it is not recommended due to administrative inefficiencies and legal concerns.

## **K. CDE AND THE HEARING AND MEDIATION SYSTEMS**

### **1. PERCEPTION**

There is a public perception among some parents and parent advocates of the improper influence of the CDE on the hearing and mediations systems.

## **RECOMMENDATION**

### **Stakeholder Agreement**

- ❑ In fulfilling its general supervision responsibilities under the IDEA in the administration of the hearing and mediation systems, the CDE should ensure the hearing and mediation systems are protected from improper influence, or even the appearance of impropriety.

### **2. CONTRACT MANAGER**

## **RECOMMENDATION**

### **Stakeholder Agreement**

- ❑ The CDE should designate a contract manager within CDE who is knowledgeable about special education hearing and mediation systems, has the authority and time dedicated to act as a liaison to expeditiously resolve resource and other logistical issues as they arise, and to participate as a member of any established advisory group.

**Six** of the eighteen Stakeholders recommend the contract manager be an attorney.

### **3. DATA COLLECTION**

#### **RECOMMENDATION**

##### **Stakeholder Agreement**

- ❑ The CDE should determine required and desirable data to be collected by the Master Contractor in the administration of the mediation and the hearing systems, including the efficacy of collecting economic, cultural and linguistic data related to access to the systems in a manner that is unobtrusive. The budget for the Master Contractor must include consideration of the cost of this recommendation.

### **4. REQUEST FOR PROPOSAL FOR THE MASTER CONTRACT**

#### **RECOMMENDATION**

##### **Stakeholder Agreement**

- ❑ In order to ensure the contract award for the master contract for the hearing and mediation systems is substantially based on qualitative factors, including the recommendations in this Report, the CDE must carefully consider the definition of a “Responsible Bidder” in the development of the Request for Proposal.

### **L. SUSTAINABLE EFFORT**

#### **RECOMMENDATION**

##### **Stakeholder Agreement**

- ❑ The CDE should require the entity administering the hearing and mediation systems to maintain an advisory committee comprised of individuals with diverse and extensive involvement in the system and to meet regularly with the advisory committee to advise the Master Contractor and the CDE on the design of solutions for systemic issues as they arise. To facilitate member’s participation, the budget for the hearing and mediation systems must include a budget for travel expenses.

### **M. STABILITY IN FUNDING**

#### **CONCLUSION**

## **Stakeholder Agreement**

- ❑ There is a budgetary history with the master contract to provide the hearing and mediation systems that projects budgets based on unrealistic trends in the use of the hearing and mediation systems and endangers the stability of the systems due to the slow rate of payment for costs incurred. Adequate and stable funding with regular payment of invoices is critical to the maintenance of efficient and effective hearing and mediation systems.

## **RECOMMENDATIONS**

### **Stakeholder Agreement**

- ❑ The CDE should base the budget for the administration of the hearing and mediation systems on realistic projections of the use of the systems to ensure stability in funding and the maintenance of the level of quality desired by all. In order for a contractor to implement the hearing and mediation systems, timely payment of invoices for costs incurred is essential.

### **Stakeholder Agreement**

- ❑ The projected budget for the administration of the hearing and mediation systems should consider the fiscal impact and ensure funding for expedited hearings in the area of discipline, the right of both parties to obtain a written verbatim transcript of the hearing and the implementation of any other recommendations in this Report with noted cost implications.

## **N. RELATED STATUTORY REVISIONS**

## **RECOMMENDATIONS**

### **Stakeholder Agreement**

- ❑ The CDE consider legislative and regulatory proposals to integrate the current statutory and regulatory provisions and consider recommendations incorporating the following statutory revisions:
- ❑ The revision of Education Code Section 56505(e)(6) to ensure the right of the parties to a hearing to be informed at least ten business days prior to a hearing of the issue(s) to be decided. This is necessary to allow for the disclosure of evidence and evaluations to the parties and the Hearing Officer five business days before the hearing and to comply with the timeline for a written offer of settlement pursuant to Title 20, United States Codes, Section 1415(i)(3)(D). Consider the efficacy of maintaining the non-initiating party's statement of issue and resolution.



### **Stakeholder Agreement**

- ❑ The revision of Education Code, Chapter 5, Procedural Safeguards to include the “stay-put” provision for mediation prior to the filing of a request for a hearing to clearly establish the right. (Reference: Education Code §56346(b))

### **Stakeholder Agreement**

- ❑ The revision of Education Code Section 56500.3 to allow parties to request a prehearing mediation with or without being accompanied by an attorney or advocate.

### **Stakeholder Agreement**

- ❑ The revision of Education Code Section 56505(e)(4) and (e)(5) to provide that any party to the hearing has a right to obtain a written, or, at the option of the parents, electronic verbatim record of the hearing and findings of fact and decisions.

### **Stakeholder Agreement**

- ❑ The revision of Education Code Section 56501(b)(1) to clearly incorporate the protections of the IDEA set forth in Title 34 Code of Federal Regulations, Section 300.506, including the requirement that mediation procedures must ensure the mediation is not used to deny or delay a parent’s right to a hearing and any additional State protections included in Education Code Section 56500.3.

**THE END OF THE REPORT**

**THE BEGINNING OF A “COMMON VISION”**